

Memorandum

To: Honorable John Chiang, Chair
Honorable Claude Parrish, Vice Chairman
Ms. Betty T. Yee, Acting Board Member
Honorable Bill Leonard
Honorable Steve Westly

Date: May 1, 2006

From: Kristine Cazadd
Chief Counsel 

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Subject: ***Repeal of Property Tax Rule 139, Restricted Access as Damage Eligible for Reassessment Relief Pursuant to Revenue and Taxation Code Section 170***

Chief Counsel Matters – Rulemaking – May 17, 2006

Background

Recognizing that in the aftermath of September 11, 2001, access to airport property throughout California was restricted, in March 2002, the Board promulgated Property Tax Rule 139, *Restricted Access as Damage Eligible for Reassessment Relief Pursuant to Revenue and Taxation Code Section 170*, effective June 15, 2002. That new rule authorized the midyear reassessment of property suffering loss in value because of such diminished access. Rule 139 provides relief to property owners by defining damage to property to include damage resulting from the restricted access to that property, thereby qualifying the property for disaster relief under Revenue and Taxation Code section 170.

Assessors from the Counties of Alameda, San Diego, San Mateo, and Santa Clara, along with intervening assessors from the Counties of Orange, Riverside, and Sacramento, challenged the validity of Rule 139. The Board and Intervenor Airlines defended the validity of Rule 139 before the Alameda County Superior Court. The Intervenor Airlines were American Airlines, United Airlines, Alaska Airlines, Aloha Airlines, America Trans Air, Continental Airlines, Delta Airlines, FedEx, Northwest Airlines, and Southwest Airlines. The trial court concluded that Rule 139 was inconsistent with Revenue and Taxation Code section 170 and invalidated the rule. The Board did not appeal the trial court's judgment. However, an appeal defending the validity of the rule was filed by the Intervenor Airlines.

On December 9, 2005, the Court of Appeal found that Rule 139 was inconsistent with the plain language of both article XIII, section 15, of the California Constitution, and subdivision (a)(2) of Revenue and Taxation Code section 170, as both of these provisions require that property be physically damaged to qualify for relief.

Staff Recommendation

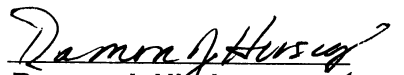

Staff recommends that pursuant to title 1, section 100 of the California Code of Regulations, that the Board adopt a change without regulatory effect by repealing Property Tax Rule 139, *Restricted Access as Damage Eligible for Reassessment Relief Pursuant to Revenue and Taxation Code Section 170*.

If you need more information or have questions on this issue, please contact Senior Tax Counsel Michael Lebeau at 714-558-6760.

KC:ml

Property/Rules/139

cc: Mr. Ramon Hirsig, MIC: 73
Mr. David J. Gau, MIC: 63
Mr. Robert Lambert, MIC: 82
Mr. Janice Thurston, MIC: 82
Mr. Dean Kinnee, MIC: 64
Ms. Mickie Stuckey, MIC: 62
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Approved 
Ramon J. Hirsig 
Executive Director